

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re patent application:

Appl. No.	:	10/737,244	Confirmation No.:6361
Applicant	:	Mark A. Bresnan, et al.	
Filed	:	December 16, 2003	
Art Unit	:	3628	
Examiner	:	Rutao Wu	
Attorney Docket No. :		F-773	Date: March 27, 2008

Mail Stop Appeal Brief- Patents  
Commissioner for Patents  
Alexandria, VA 22313-1450

**APPEAL BRIEF**

Sir:

Appellants respectfully submit the following Brief in the appeal of the subject application. This Brief is in furtherance of the Notice of Appeal filed in this case on January 16, 2008, following a Final Office Action mailed October 16, 2007.

The Commissioner is hereby authorized to charge any additional fees that may be required for this appeal or to make this brief timely or credit any overpayment to Deposit Account No. 16-1885.

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**I. REAL PARTY IN INTEREST**

The real party in interest in this appeal is Pitney Bowes Inc., a Delaware corporation, the assignee of this application.

**II. RELATED APPEALS AND INTERFERENCES**

There are no appeals or interferences known to Appellants, their legal representative, or the assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

**III. STATUS OF CLAIMS**

(1) Claims 2 - 5, 8 -16, 19 - 33, 39 - 43, 46 - 54, and 57 - 71 are the subject of this Appeal. Claims 2-5, 12-16, 21-24, 31, 39-41, 50-54, 59-62, and 69 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,058,030 to Schumacher ("Schumacher"). Claims 19, 32, 33, 35, 42-43, 57, 70, and 71 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Schumacher. Claims 8-11, 20, 46-49 and 58 stand rejected under 35 U.S.C. § 103(a) as obvious over Schumacher in view of U.S. publication 2004/0230523 to Johnson ("Johnson"). Claims 25-27, 29, 63-65 and 67 stand rejected under 35 U.S.C. § 103(a) as obvious over Schumacher in view of U.S. publication 2002/0133472 to Stepno ("Stepno").

(2) Appellants hereby appeal the rejection of claims 2 - 5, 8 -16, 19 - 33, 39 - 43, 46 - 54, and 57 - 71.

**IV. STATUS OF THE AMENDMENTS**

Claims 1-76 were filed with the application on December 16, 2003. In an Amendment dated July 30, 2007, claims 2, 3, 7, 12, 18-24, 31, 32, 34, 37, 39 - 41, 45, 50 and 56 - 75 were amended, claims 1, 17, 38 and 55 were cancelled and claim 76 was removed due to renumbering. In response to the Final Office

Action mailed October 16, 2007, an Amendment After Final dated December 19, 2007 amending claims 3, 8, 12, 19, 20, 41, 46, 50, 57, 58 and 71 and claims 6, 7, 17, 18, 34-37, 44, 45, 56 and 72-75 were cancelled, the amendment was initially not entered. In response to an Advisory Action dated January 8, 2008 Appellants filed a Notice of Appeal on January 16, 2008. After the Notice of Appeal, Appellant's undersigned counsel contacted Supervisory Patent Examiner John Hayes with regard to the failure to enter the after-final amendments. Examiner Hayes indicated that the amendments would be entered, and that this Appeal Brief should address the claims as amended-after-final.

(3) Therefore, current claims 2 - 5, 8 -16, 19 - 33, 39 - 43, 46 - 54, and 57 - 71 are set forth in Appendix A to this Brief.

#### **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Claim 3 - The claimed invention comprises a message processing system for preparing a large quantity of messages to be distributed to recipients. The first major component is a consolidator module. The consolidator module (Fig. 1, ref. 11) receives data corresponding to the plurality of messages to be processed. The consolidator module is programmed to select individual message do be consolidated into a single message package based on predetermined criteria. (Page 15, line 9, to page 18, line 13).

The second major component, the distributor module (Fig. 1, ref. 12), is coupled to the consolidator module and receives a data stream containing consolidated message packages. The distributor module is programmed to determine optimal routing for production of message packages based on further criteria. (Page 18, line 14, to page 20, line 18).

In the claimed embodiment, the recipients are customers and the consolidator module and the distributor are coupled to a customer relationship management system. (Page 10, line 8, to page 11, line 11). The customer relationship management system determines at least some of the first and second criteria. (Id.) The first and second

criteria include marketing business rules determined by the customer relationship management system. (Id.) The marketing rules include a rule that messages including particular marketing content may, or may not, be consolidated. (Page 16, line 15, to page 17, line 10).

Claim 12 - The claimed invention comprises a message processing system for preparing a large quantity of messages to be distributed to recipients. The first major component is a consolidator module. The consolidator module (Fig. 1, ref. 11) receives data corresponding to the plurality of messages to be processed. The consolidator module is programmed to select individual message do be consolidated into a single message package based on predetermined criteria. (Page 15, line 9, to page 18, line 13).

The second major component, the distributor module (Fig. 1, ref. 12), is coupled to the consolidator module and receives a data stream containing consolidated message packages. The distributor module is programmed to determine optimal routing for production of message packages based on further criteria. (Page 18, line 14, to page 20, line 18).

The consolidator module and the distributor are coupled to a statement applications processing module. (Page 12, line 9, to page 13, line 9). The statement applications processing module determines at least some of the first and second criteria. (Id.) The first and second criteria include sender rules received from the statement applications processing module. (Id.) The first criteria includes a sender rule of whether or not that messages including particular business content may be consolidated. (Id.)

Claim 41 - The claimed invention comprises a message processing method for preparing a large quantity of messages to be distributed to recipients. The first major step is a consolidating. The consolidator step receives data corresponding to the plurality of messages to be processed. The consolidator step selects individual

messages do be consolidated into a single message package based on predetermined criteria. (Page 15, line 9, to page 18, line 13).

The second major step is distributing. The distribution step receives a data stream containing consolidated message packages. The distributor step determines optimal routing for production of message packages based on further criteria. (Page 18, line 14, to page 20, line 18).

In the claimed embodiment, the recipients are customers and the consolidator and distributor steps work with a customer relationship management system. (Page 10, line 8, to page 11, line 11). The customer relationship management system determines at least some of the first and second criteria. (Id.) The first and second criteria include marketing business rules determined by the customer relationship management system. (Id.) The marketing rules include a rule that messages including particular marketing content may, or may not, be consolidated. (Page 16, line 15, to page 17, line 10).

Claim 50 - The claimed invention comprises a message processing method for preparing a large quantity of messages to be distributed to recipients. The first major step is a consolidating. The consolidator step receives data corresponding to the plurality of messages to be processed. The consolidator step selects individual messages do be consolidated into a single message package based on predetermined criteria. (Page 15, line 9, to page 18, line 13).

The second major step is distributing. The distribution step receives a data stream containing consolidated message packages. The distributor step determines optimal routing for production of message packages based on further criteria. (Page 18, line 14, to page 20, line 18).

The consolidator and distributor steps work with a statement applications processing module. (Page 12, line 9, to page 13, line 9). The statement applications processing module determines at least some of the first and second criteria. (Id.) The first and second criteria include sender rules received from the statement applications processing module. (Id.) The first criteria includes a sender rule of whether or not that messages including particular business content may be consolidated. (Id.)

**VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Whether claims 2-5, 12-16, 21-24, 31, 34, 36, 37, 39-41, 50-54, 59-62, and 69 are patentable over 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,058,030 Schumacher ("Schumacher") or whether claims 7, 18, 19, 32, 33, 35, 42-45, 56, 70, and 71 are patentable under 35 U.S.C. § 103(a) as being obvious over Schumacher. Claims 8-11, 20, 46-49 and 58 stand rejected under 35 U.S.C. § 103(a) as obvious over Schumacher in view of U.S. publication 2004/0230523 to Johnson ("Johnson"). Claims 25-27, 29, 63-65 and 67 stand rejected under 35 U.S.C. § 103(a) as obvious over Schumacher in view of U.S. publication 2002/0133472 to Stepno ("Stepno"). Claims 28, 30, 66, and 68 stand rejected under 35 U.S.C. § 103(a) as obvious over Schumacher in view of Stepno in further view of Johnson.

**VII. ARGUMENT**

**Rejections Under 35 U.S.C. § 102(b)**

Pending claims 2-5, 12-16, 21-24, 31, 34, 36, 37, 39-41, 50-54, 59-62, and 69 stand rejected as being anticipated by U.S. Patent 5,058,030 to Schumacher, ("Schumacher"). Independent claims 3, 12, 41 and 50 have been amended to include features of previous claims 7, 18, 45, and 56, all of which were previously rejected under §103 obviousness. Accordingly, it is submitted that the §102 rejections are not applicable, and the analysis should be proceed under §103 issues as were applicable to those dependent claims.

**Rejections Under 35 U.S.C. § 103(a)**

*Rejections based on Schumacher alone.*

Pending claims 19, 32, 33, 42, 43, 45, 57, 70 and 71 are rejected as obvious in view of Schumacher alone. Independent claims 3, 12, 41 and 50 have been amended to include features of cancelled claims 7, 18, 45, and 56, all of which were previously rejected under §103 obviousness based on Schumacher.

***Claims 3 and 41***

Claim 3 recites the following elements not found in Schumacher:

the consolidator module and the distributor are coupled to a customer relationship management system, the customer relationship management system determining at least some of the first and second criteria;

wherein the first and second criteria include marketing business rules are determined by the customer relationship management system; and,

wherein the marketing rules include at least one of a rule that messages including particular marketing content may be consolidated and a rule that messages including particular marketing content may not be consolidated.

Claim 41 recites the following steps not found in Schumacher:

determining at least some of the first and second criteria through a customer relationship management system;

wherein the step of determining the first and second criteria includes marketing business rules determined by the customer relationship management system; and,

preventing messages from being consolidated based on the marketing rules that include at least one of a rule that messages including particular marketing content may be consolidated or a rule that messages including particular marketing content may not be consolidated.

Claims 3 and 41 both recite "marketing rules" that are used to determine whether messages with particular marketing content may, or may not, be combined. The Examiner, has acknowledged that Schumacher does not disclose these features, but asserts that known privacy considerations would have made those features obvious. Even assuming that the unsupported motivation of "privacy" existed, there is no nexus between the alleged privacy considerations and the feature recited in the claims. The claims are directed to whether particular marketing content can be consolidated. There is no privacy concern that is being addressed by these features, and there is no particular privacy benefit achieved by the claimed invention. Accordingly, the Examiner



has not identified any prior art, or any relevant basis, for finding that these features were known, or obvious.

In particular in Schumacher, the messages that are being combined are going to the same person. See, e.g., col. 3, lines 8-18, col. 10, lines 15-64. Thus, there would never be any concern about privacy that would justify the Examiner's assertions that the relevant features would be obvious. Also, there is no basis for a "privacy" fear that the creator of the marketing content would know anything about the document on which the message was being printed. It is clear, for example, that a message promoting 1-800-FLOWERS on a persons credit card statement, does not mean that the flower company has access to the credit card data. Further, the argument fails further because the claim elements do nothing to eliminate these fabricated concerns of privacy, and would therefore not be an obvious solution to that alleged problem. It is only through improper hindsight that the Examiner has found obviousness, and no reasonable basis has been provided for the existence of the alleged "privacy" prior art or for combining it with the Schumacher reference. The Examiner's chain of reasoning is speculative and is unsupported throughout.

### ***Claims 12 and 50***

These claims recite a sender rule that determines whether messages with particular business content may, or may not, be combined. The Examiner has acknowledged that Schumacher does not disclose these features, but asserts that known privacy considerations would have made those features obvious. Even assuming that the unsupported motivation of "privacy" existed, there is no nexus between the alleged privacy considerations and the feature recited in the claims. The claims are directed to whether particular business content can be consolidated. There is no privacy concern that is being addressed by these features. Accordingly, the Examiner has not identified any prior art, or any relevant basis, for finding that these features were known, or obvious. The Examiner has also failed to identify how any alleged privacy violation would occur. Merely including business content from two sources does not mean that existence of a privacy violation.

In particular in Schumacher, the messages that are being combined are going to the same person. See, e.g., col. 3, lines 8-18, col. 10, lines 15-64. Thus, there would never be any concern about privacy that would justify the Examiner's assertions that the relevant features would be obvious. Nor is there any explanation as to why the particular recited combination would be arrived at based on the alleged privacy concern. It is only through improper hindsight that the Examiner has found obviousness, and no reasonable basis has been provided for combining the alleged "privacy" prior art with the Schumacher reference.

#### **Rejections based on Schumacher and Johnson**

Claims 8-11, 20, 46-49 and 58 stand rejected under 35 U.S.C. § 103(a) as obvious over Schumacher in view of U.S. publication 2004/0230523 to Johnson ("Johnson"). These rejected claims all depend from independent claims that are allowable over Schumacher for the reasons given above. Johnson fails to cure the deficiencies identified above for those independent claims. Thus these rejections should be overruled for the same reasons.

#### **Rejections based on Schumacher and Stepno**

Claims 25-27, 29, 63-65 and 67 stand rejected under 35 U.S.C. § 103(a) as obvious over Schumacher in view of U.S. publication 2002/0133472 to Stepno ("Stepno"). These rejected claims all depend from independent claims that are allowable over Schumacher for the reasons given above. Stepno fails to cure the deficiencies identified above for those independent claims. Thus, these rejections should be overruled for the same reasons.

**Rejections based on Schumacher, Stepno, and Johnson**

Claims 28, 30, 66, and 68 stand rejected under 35 U.S.C. § 103(a) as obvious over Schumacher in view of Stepno in further view of Johnson. These rejected claims all depend from independent claims that are allowable over Schumacher for the reasons given above. Stepno and Johnson fails to cure the deficiencies identified above for those independent claims. Thus, these rejections should be overruled for the same reasons.

**VIII. CONCLUSION**

For the reasons advanced above, Appellants respectfully submit that claims 2-5, 8-16, 19-33, 39-43, 46-54 and 57-71 are patentable. Reversals of the rejections by the Examiner are respectfully requested.

Respectfully submitted,

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CLAIMS APPENDIX A

1. (Cancelled)
2. The message processing system of claim 3 wherein the distributor module is programmed to format the consolidated message packages in accordance with the determined optimal routing.
3. A message processing system for preparing a plurality of messages to be distributed to recipients, the system comprising:
  - a consolidator module receiving data corresponding to the plurality of messages, the consolidator module programmed to consolidate multiple of the plurality of messages into a single message package, the consolidator module consolidating the messages based on first criteria;
  - a distributor module coupled to the consolidator module and receiving a data stream containing consolidated message packages, the distributor module programmed to determine optimal routing for production of message packages based on second criteria;
  - wherein the recipients are customers and the consolidator module and the distributor are coupled to a customer relationship management system, the customer relationship management system determining at least some of the first and second criteria;

wherein the first and second criteria include marketing business rules are determined by the customer relationship management system; and,

wherein the marketing rules include at least one of a rule that messages including particular marketing content may be consolidated and a rule that messages including particular marketing content may not be consolidated.

4. The message processing system of claim 3 wherein the customer relationship management system determines a template for message packages and the template is transmitted to the consolidator module for forming the message packages.

5. The message processing system of claim 4 wherein the template includes marketing content developed by marketing tools in the customer relationship management system.

6. (Cancelled)

7. (Cancelled)

8. The message processing system of claim 3 wherein at least one of the first and second criteria include customer preferences.

9. The message processing system of claim 8 wherein the first criteria includes a customer preference on whether or not consolidation is desired.

10. The message processing system of claim 8 wherein the first criteria includes a customer preference on whether or not householding is desired.

11. The message processing system of claim 8 wherein the second criteria includes a customer preference of physical mail or electronic delivery.

12. A message processing system for preparing a plurality of messages to be distributed to recipients, the system comprising:

a consolidator module receiving data corresponding to the plurality of messages, the consolidator module programmed to consolidate multiple of the plurality of messages into a single message package, the consolidator module consolidating the messages based on first criteria;

a distributor module coupled to the consolidator module and receiving a data stream containing consolidated message packages, the distributor module programmed to determine optimal routing for production of message packages based on second criteria;

wherein the consolidator module and the distributor are coupled to a statement applications processing module, the statement applications processing module determining at least some of the first and second criteria;

wherein the first and second criteria include sender rules received from the statement applications processing module; and,

wherein the first criteria includes at least one of a sender rule that messages including particular business content may be consolidated or a sender rule that messages including particular business content may not be consolidated.

13. The message processing system of claim 12 wherein the statement applications processing module provides message business data to the consolidator module for forming the message packages.

14. The message processing system of claim 12 wherein the statement applications processing module receives data from an automated data factory having a plurality of mail production sites.

15. The message processing system of claim 14 wherein the distributor module receives postal delivery metrics, and wherein the distributor module calculates transit times for message delivery from the plurality of mail production sites.

16. The message processing system of claim 14 wherein the second criteria includes quality requirements and wherein the distributor module receives service and quality metrics corresponding to the plurality of mail production sites, and wherein the

distributor module routes message packages based on sites meeting the quality requirements.

17. (Cancelled)

18. (Cancelled)

19. The message processing system of claim 12 wherein the first criteria includes at least one of a sender rule that messages including particular business content may be househanded, and a sender rule that messages including particular business content may not be househanded.

20. The message processing system of claim 12 wherein the second criteria include at least one of a sender rule that messages including particular business content may be electronically delivered or a sender rule that messages including particular business content may not be electronically delivered.

21. The message processing system of claim 12 wherein the sender rules include a requirement to minimize time for delivery of messages to recipients, and whereby the consolidator module and distributor module form and route message packages in order to minimize time for delivery.



22. The message processing system of claim 12 wherein the sender rules include a requirement to maximize throughput of message packages, and whereby the consolidator module and distributor module form and route message packages in order to maximize throughput.

23. The message processing system of claim 12 wherein the sender rules include a requirement to minimize mail production costs, and whereby the consolidator module and distributor module form and route message packages in order to minimize mail production costs.

24. The message processing system of claim 12 wherein the consolidator selects messages for consolidation from the plurality of messages based on the messages including a same delivery address.

25. The message processing system of claim 24 wherein the consolidator selects messages for consolidation based on messages having due dates proximal in time.

26. The message processing system of claim 25 wherein due dates of messages selected for consolidation are adjusted by the consolidator module to match.

27. The message processing system of claim 25 wherein the consolidator module determines whether a customer preference authorizes consolidation for a particular

message, and whereby consolidation is disallowed by the consolidator module if there is no authorization.

28. The message processing system of claim 27 wherein, if the customer preference does not authorize consolidation, the consolidator generates content to be included in the message that describes benefits of consolidation.

29. The message processing system of claim 25 wherein the consolidator module determines whether a customer preference authorizes householding for a particular message, and whereby householding is disallowed by the consolidator module if there is no authorization.

30. The message processing system of claim 29 wherein, if the customer preference does not authorize householding, the consolidator generates content to be included in the message that describes benefits of householding.

31. The message processing system of claim 12 wherein the distributor module determines optimal site routing based on real time site production data.

32. The message processing system of claim 31 wherein the distributor module determines whether a site or a machine at a site is non-operational, and wherein the second criteria include a failover site or channel designation, and whereby the failover

site or channel designation is used for optimal routing instead of the non-operational site or machine.

33. The message processing system of claim 31 wherein the distributor module determines optimal site routing based on real time costs of site operation.

34.-38. (Cancelled)

39. The method of claim 41 wherein the step of determining optimal routing includes designating electronic presentment of the message packages and the step of transmitting includes electronic presentment of the message packages.

40. The method of claim 41 further comprising the step of formatting the consolidated message packages in accordance with the determined optimal routing.

41. A method for processing and preparing a plurality of messages to be distributed to recipients, the method comprising:

receiving data corresponding to the plurality of messages;

consolidating multiple of the plurality of messages into single message packages, said consolidating of the messages into consolidated message packages based on first criteria;

determining optimal routing for production of message packages based on second criteria;

transmitting the message packages to one or more of a plurality of message production sites based on the optimal routing;

determining at least some of the first and second criteria through a customer relationship management system;

wherein the step of determining the first and second criteria includes marketing business rules determined by the customer relationship management system; and,

preventing messages from being consolidated based on the marketing rules that include at least one of a rule that messages including particular marketing content may be consolidated or a rule that messages including particular marketing content may not be consolidated.

42. The method of claim 41 further comprising the step of determining a template for message packages with the customer relationship management system.

43. The method of claim 42 wherein the step of determining the template comprises including marketing content developed by marketing tools in the customer relationship management system.

44. (Cancelled)

45. (Cancelled)

46. The method of claim 41 further including gathering customer preference data and including at least one of the first and second criteria.

47. The method of claim 46 wherein the step of consolidating is controlled based on the first criteria which includes a customer preference on whether or not consolidation is desired.

48. The method of claim 46 wherein the step of consolidating is controlled based on the first criteria which includes a customer preference on whether or not householding is desired.

49. The method of claim 46 wherein the step of determining optimal routing is based on the second criteria which includes a customer preference of physical mail or electronic delivery.

50. A method for processing and preparing a plurality of messages to be distributed to recipients, the method comprising:

receiving data corresponding to the plurality of messages;

consolidating multiple of the plurality of messages into single message packages, said consolidating of the messages into consolidated message packages based on first criteria;

determining optimal routing for production of message packages based on second criteria;

transmitting the message packages to one or more of a plurality of message production sites based on the optimal routing;

determining at least some of the first and second criteria with a statement applications processing module;

wherein the step of determining at least some of the first and second criteria includes incorporating sender rules received from the statement applications processing module; and,

wherein the step of consolidating is controlled by the first criteria which includes at least one of a sender rule that messages including particular business content may be consolidated, or a sender rule that messages including particular business content may not be consolidated.

51. The method of claim 50 further including the step of providing message business data from the statement applications processing module for forming the message packages.

52. The method of claim 50 further including the step of receiving data from an automated data factory controlling the plurality of mail production sites, and using said automated data factory data for determining said optimal routing.

53. The method of claim 52 further including receiving postal delivery metrics, and the step of determining optimal routing includes calculating transit times for message delivery from the plurality of mail production sites.

54. The method of claim 52 further including the steps of  
receiving service and quality metrics corresponding to the plurality of mail production sites;  
including quality requirements in the second criteria; and  
determining the optimal routing of message packages based on sites meeting the quality requirements.

55. (Cancelled).

56. (Cancelled)

57. The method of claim 50 wherein the step of consolidating is controlled by the first criteria which includes at least one of a sender rule that messages including particular

business content may be householded, or a sender rule that messages including particular business content may not be householded.

58. The method of claim 50 wherein the step of determining optimal routing is based on at least one of a sender rule that messages including particular business content may be electronically delivered, and a sender rule that messages including particular business content may not be electronically delivered.

59. The method of claim 50 wherein the sender rules include a requirement to minimize time for delivery of messages to recipients, and the steps of consolidating and determining optimal routing are controlled to form and route message packages in order to minimize time for delivery.

60. The method of claim 50 wherein the sender rules include a requirement to maximize throughput of message packages, and the steps of consolidating and determining optimal routing are controlled to form and route message packages in order to maximize throughput.

61. The method of claim 50 wherein the sender rules include a requirement to minimize mail production costs, and wherein the steps of consolidating and determining optimal routing are controlled to form and route message packages in order to minimize mail production costs.



62. The method of claim 50 wherein the step of consolidating includes selecting messages for consolidation from the plurality of messages based on the messages having a same delivery address.

63. The method of claim 62 wherein the step of consolidating includes selecting messages for consolidation based on messages having due dates proximal in time.

64. The method of claim 63 wherein the step of consolidating includes adjusting the due dates of messages selected for consolidation so that consolidated messages have the same due dates.

65. The method of claim 63 wherein the step of consolidating includes determining whether a customer preference authorizes consolidating for a particular message, and whereby consolidating is disallowed if there is no authorization.

66. The method of claim 65 wherein, if the customer preference does not authorize consolidation, further including a step of generating content to be included in the message describing benefits of consolidation.

67. The method of claim 63 wherein the step of consolidating includes determining whether a customer preference authorizes householding for a particular message, and whereby householding is disallowed if there is no authorization.

68. The method of claim 67 wherein, if the customer preference does not authorize householding, further including a step of generating content to be included in the message describing benefits of householding.

69. The method of claim 50 wherein the step of determining optimal routing is based on real time site production data received from the plurality of message production sites.

70. The method of claim 69 wherein the step of determining optimal routing includes identifying whether a site or a machine at a site is non-operational, and wherein the second criteria include a failover site or channel designation, and whereby the failover site or channel designation is used for optimal routing instead of the non-operational site or machine.

71. The method of claim 69 wherein the step of determining optimal routing is based on real time costs of site operation.

72.-75. (Cancelled)

**EVIDENCE APPENDIX B**

None

**RELATED PROCEEDINGS APPENDIX C**

None